IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

MFA.No. 294 of 1996()

OP.(MV)NO.769/1991 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,KOZHIKODE

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APPELLANT/PETITIONER:

PERACHAKUTTY, KOTTAMBIL THAZHAM HOUSE, EDAKKARA, P.O.KOZHIKODE.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS/RESPONDENTS::

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1. **A.K.ABDURAHIMAN, VALLIL HOUSE, KANNANKARA, CHELANNOOR AMSOM DESOM OF KOZHIKODE TALUK.**

2. **P.K.RAJAN, KARUVISSERI AMSOM DESOM OF KOZHIKODE TALUK.**

3. **M/S.ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, SREENATH BUILDING, BADAKARA NARAYANAN NAGAR, KOZHIKODE DISTRICT.**

BY ADV. SRI.DENY JOSEPH
SRI.MAT.PAI
R3 BY ADV.SRI.MATHEWS JACOB (SR.)
SRI.A.K.SRINIVASAN
SRI.JOHNSON KANALAN

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 294 OF 1996

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Dated this the 17th day of December, 2007

J U D G M E N T

Admitted. Advocate Shri Mathews Jacob takes notice for the third respondent. Notice to respondents 1 and 2 is dispensed with. Appeal itself is heard and disposed of.

2. Petitioner in O.P(MV) No. 769 of 1991 on the file of the Motor Accidents Claims Tribunal, Kozhikode, is the appellant. He filed the Original Petition claiming Rs.1,00,000/- as compensation impleading the owner, driver and Insurer of Autorikshaw bearing Reg. No.KL-11/5914. Owner and driver of the vehicle did not contest. Insurer alone contested the case. Negligence alleged was denied and quantum of compensation claimed was disputed. The Tribunal found that the accident occurred due to the negligence of the driver of the Autorikshaw. It also found that the appellant was entitled to get a compensation of Rs.17,000/-. It further found that the Insurer was liable to indemnify the insured. Contending that the quantum of compensation awarded is inadequate

petitioner himself has come up in appeal. The only question arising for consideration is whether the appellant is entitled to get any additional compensation.

3. The main ground alleged in the appeal is that the appellant sustained skull fracture for which no compensation awarded. It was alleged that the compensation awarded under the heads of loss of earning and pain and suffering is too low. Considering all aspects of the matter, I am of the view that the Tribunal ought to have awarded Rs.15,000/- more as compensation.

4. Learned counsel for the Insurer submitted that the accident occurred on 9.11.1990 and the appeal was filed only in the year 1996. It is also argued that for the last so many years the appeal was pending before this Court since the delay was not condoned and hence the Insurer may not be made liable for the interest for about a decade for no fault of the Insurer.

5. The appeal was filed in the year 1996 and it was pending for all these periods. So the appellant is not entitled to get interest from the Insurer for the period from 11.8.1995,

the date of award, till today.

In the result, the appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover a sum of Rs.15,000/- as additional compensation with 9% interest from the date of petition till 11.8.1995 and from today till date of deposit. The Insurer is directed deposit the entire amount within two months from today. On deposit, the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 294 OF 1996

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J U D G M E N T

17TH DECEMBER, 2007